ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, JUDGE

DIVISION II

CACR06-982

RICKEY ALAN CALDWELL

April 25, 2007

APPELLANT

V.

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT
[NO. CR2005-4848]

STATE OF ARKANSAS

HON. WILLARD PROCTOR, JR., CIRCUIT JUDGE

APPELLEE

AFFIRMED

Rickey Alan Caldwell was convicted in a Pulaski County bench trial of nonsupport, and he was sentenced to six years' probation, fined $300, and ordered to pay restitution in the amount of $26,341 at a rate of $365 per month. On appeal, Caldwell argues that the circuit judge erred in 1) ordering him to pay $26,341 in restitution because the State "conceded" that he would only owe $23,841; and 2) failing to hold a sentencing hearing. We affirm.

In his first point, Caldwell acknowledges that evidence from his ex-wife Rebecca Caldwell Smith and Office of Child Support Enforcement employee Yolanda Williams established that he had failed to pay $26,341 in court-ordered support for his twin daughters. He notes further that the trial court ordered the cash bond that he had posted in the amount of $2,500 "be credited towards the restitution." Caldwell argues that the fact that the

judgment and disposition order recites that the amount of restitution is $26,341, and not $23,841, is reversible error. We disagree.

The fact that the trial judge approved a request that Caldwell's $2,500 cash bond be applied toward his restitution does not affect the total amount of restitution that he is obligated to pay. Accordingly, we hold that the trial court did not commit reversible error.

For his second point, Caldwell argues that the trial court erred in failing to hold a sentencing hearing. Citing *Beqiri v. State*, 94 Ark. App. 45, ___ S.W.3d ___ (2006), he contends that the State was required to put on proof of the amount of restitution that he actually owed during the sentencing phase of the trial. We hold that this argument is unavailing.

We agree that in *Beqiri* this court held that the failure to comply with Arkansas Code Annotated section 5-4-205(b)(4)(A) (Repl. 2006), which requires that the amount of restitution be determined "by the preponderance of the evidence presented to the sentencing authority during the sentencing phase of the trial," is reversible error. However, while trial counsel in both cases expressed a need to examine the amount of restitution to be ordered in the sentencing phase of the trial, in *Beqiri*, the trial judge "brushed aside the request and asked the prosecutor for the amount of restitution." Conversely, in the instant case, while the trial judge likewise did not honor the request to have a restitution hearing, we are unable to ignore the fact that Caldwell's attorney responded in the negative when the trial judge asked if there was "any legal reason why sentencing should not be imposed at this time." That inquiry by the trial judge was a clear opportunity for Caldwell to obtain a ruling on his request for a

hearing. It is well settled that an appellant must obtain a ruling on his or her argument to preserve it for appeal. *Jones v. State*, 355 Ark. 316, 136 S.W.3d 774 (2003). If there is not a resolution then the argument is waived and may not be raised on appeal. *Id.* We hold that, in agreeing that there was no legal reason for not imposing sentence rather than asserting Caldwell's right to a restitution hearing, Caldwell's trial counsel expressly waived the opportunity to further contest the proof of what he owed in child support, including raising that issue on appeal.

Affirmed.

PITTMAN, C.J., and MILLER, J., agree.